



BancBoston Leasing

2-346A018

RECORDATION NO **18040** FILED 1425

DEC 11 1992-3 20 PM

December 10, 1992

INTERSTATE COMMERCE COMMISSION

The Honorable Noretta R. McGee
Secretary
Interstate Commerce Commission
12th Street and Constitution Avenue, N.W.
Washington, DC 20423

RECORDATION NO **18040** FILED 1425

DEC 11 1992-3 20 PM

INTERSTATE COMMERCE COMMISSION

Dear Ms. McGee:

We have enclosed an original and one certified copy of the primary document described below to be recorded pursuant to Section 11303 of Title 49 of the United States Code:

Master Lease Agreement and Rider #1 to Master Lease Agreement dated November 17, 1992 between BancBoston Leasing Inc. (Lessor) and Helm Financial Corporation (Lessee) with the following Exhibits thereto:

Certification of Resolutions and Officers

Exhibit A - Equipment Schedule No. 1

Exhibit B - Certificate of Acceptance to Equipment Schedule No. 1

Exhibit A - to Rider #1 to Master Lease Agreement

The primary document is the lease and rider. The names and addresses of the parties to the document are as follows:

Lessor: BancBoston Leasing Inc.
100 Federal Street
Boston, MA 02110

Lessee: Helm Financial Corporation
One Embarcadero Center
San Francisco, CA 94111

A description of the equipment covered by the document follows:

(71) 100 ton Tough Hatch with gravity outlets, covered hopper cars.

A fee of \$17.00 is enclosed. Please return the original document after recordation to BancBoston Leasing Inc., 100 Federal Street, 01-23-05, Boston, Massachusetts 02110.

BancBoston Leasing Inc., 100 Federal Street, Boston, Massachusetts 02110

a BANK OF BOSTON company

G-268

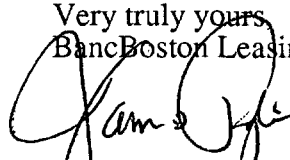
December 10, 1992
Page Two

A short summary of the document to appear in the index as follows:

"Lease between BancBoston Leasing Inc., 100 Federal Street, Boston, Massachusetts 02110 (Lessor) and Helm Financial Corporation, One Embarcadero Center, San Francisco, California 94111 (Lessee) of the following equipment:

(71) 100 ton Tough Hatch with gravity outlets, covered hopper cars, SIRX400024 - SIRX400029, SIRX400045 - SIRX400061, SIRX400063 - SIRX400074, SIRX460035 - SIRX460055, SIRX460057, SIRX460058, SIRX460060 - SIRX460071 and SIRX460074.

Very truly yours,
BancBoston Leasing Inc.



James D. Tighe
Vice President

JDT:dlp

Interstate Commerce Commission

Washington, D.C. 20423

12/11/82

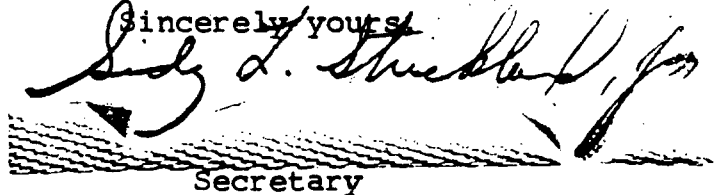
OFFICE OF THE SECRETARY

James D. Tighe
Banc Boston Leasing
100 Federal Street
Boston, MA. 02110

Dear Sirs:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 12/11/92 at 3:20PM, and assigned re-
recording number(s). 18040 and 18040-A.

Sincerely yours,



Secretary

SIDNEY L. STRICKLAND, JR.

Enclosure(s)

RECORDED 18040 FILED 1425

DEC 11 1992-3 20 PM

INTERSTATE COMMERCE COMMISSION

This is certified to be a true copy of the original document.



Notary Public

My commission expires on 12-12-97.



BancBoston Leasing

a BANK OF BOSTON company

18040
RECORDATION NO. FILED 1425

DEC 11 1992-3 20 PM

INTERSTATE COMMERCE COMMISSION

MASTER LEASE AGREEMENT

This MASTER LEASE AGREEMENT, dated as of the 17th day of November, 1992, ("Lease Agreement") is made at Boston, Massachusetts by and between BancBoston Leasing Inc. ("Lessor"), a Massachusetts corporation with its principal place of business at 100 Federal Street, Boston, Massachusetts 02110 and Helm Financial Corporation

("Lessee"), a California corporation with its principal place of business at One Embarcadero Center, San Francisco, California 94111

IN CONSIDERATION OF the mutual promises and covenants contained herein, Lessor and Lessee hereby agree as follows:

1. **Property Leased.** At the request of Lessee and subject to the terms and conditions of this Lease Agreement, Lessor shall lease to Lessee and Lessee shall lease from Lessor such personal property ("Equipment") as may be mutually agreed upon by Lessor and Lessee. The Equipment shall be selected by or ordered at the request of Lessee, identified in one or more equipment schedules substantially in the form of Exhibit A attached hereto ("Equipment Schedule") and accepted by Lessee in one or more certificates of acceptance ("Certificate of Acceptance") in the form of Exhibit B attached hereto. Each Equipment Schedule executed by Lessor and Lessee and each Certificate of Acceptance executed by Lessee shall constitute a part of this Lease Agreement.

2. **Certain Definitions.**

2.1 The "Acquisition Cost" shall mean the total cost of the Equipment paid by Lessor as set forth in the applicable Equipment Schedule.

2.2 The "Commencement Date" shall mean the date on which the Equipment identified in the applicable Equipment Schedule is accepted and placed in service by Lessee under this Lease Agreement. Each Commencement Date shall be evidenced by the Certificate of Acceptance applicable to such Equipment Schedule.

2.3 The "Rent Start Date" shall mean either (i) the first day of the month following the month in which the Commencement Date occurs or (ii) the Commencement Date, if the Commencement Date occurs on the first day of the month.

2.4 The "Monthly Rent" shall mean the amount set forth in the applicable Equipment Schedule as Monthly Rent for the Equipment identified on such Equipment Schedule.

2.5 The "Daily Rent" shall mean one-thirtieth (1/30) of the Monthly Rent.

2.6 The words "herein", "hereof", and "hereunder" shall refer to this Lease Agreement as a whole and not to any particular section. All other capitalized terms defined in this Lease Agreement shall have the meanings assigned thereto.

3. **Initial Term of Lease; Payment of Rent.**

3.1 The term of lease for the Equipment ("Initial Term") shall begin on the Commencement Date set forth in the applicable Certificate of Acceptance and shall continue during and until the expiration of the number of full calendar months set forth in the applicable Equipment Schedule, measured from the Rent Start Date. The Initial Term may not be cancelled or terminated except as set forth in Section 10.2 below.

3.2 At the expiration of the Initial Term, Lessor and Lessee may extend the lease of the Equipment for any period as they may agree upon in writing ("Extended Term") at the then fair market rental value of the Equipment, as determined in good faith by Lessor.

3.3 Aggregate Daily Rent shall be due and payable by Lessee on the Rent Start Date in an amount equal to the Daily Rent multiplied by the actual number of days elapsed from, and including, the Commencement Date to, but excluding, the Rent Start Date. The Monthly Rent shall be due and payable on the Rent Start Date and, thereafter on the first day of each month of the Initial Term or any Extended Term. All Daily Rents and Monthly Rents shall be paid to Lessor at its office in Boston, Massachusetts.

4. **Acceptance of Equipment; Exclusion of Warranties.**

4.1 Lessee shall signify its acceptance of the Equipment identified in the applicable Equipment Schedule by promptly executing and delivering to Lessor a Certificate of Acceptance. Lessee acknowledges that its execution and delivery of the Certificate of Acceptance shall conclusively establish, as between Lessor and Lessee, that the Equipment has been inspected by Lessee, is in good repair and working order, is of the design, manufacture and capacity selected by Lessee, and is accepted by Lessee under this Lease Agreement.

4.2 In the event the Equipment is ordered by Lessor from a manufacturer or supplier at the request of Lessee, Lessor shall not be required to pay the Acquisition Cost for such Equipment unless and until the applicable Certificate of Acceptance has been received by Lessor. Lessee hereby agrees to indemnify, defend and hold Lessor harmless from any liability to any manufacturer or supplier arising from the failure of Lessee to lease any Equipment which is ordered by Lessor at the request of Lessee or for which Lessor has assumed an obligation to purchase.

4.3 Lessor leases the Equipment to Lessee and Lessee leases the Equipment from Lessor "AS IS" and "WITH ALL FAULTS". Lessee hereby acknowledges that (i) Lessor is not a manufacturer, supplier or dealer of such Equipment nor an agent thereof; and (ii) LESSOR HAS NOT MADE, DOES NOT MAKE, AND HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT INCLUDING, BUT NOT LIMITED TO, ITS DESIGN, CAPACITY, CONDITION, MERCHANTABILITY, OR FITNESS FOR USE OR FOR ANY PARTICULAR PURPOSE. Lessee further acknowledges that Lessor is not responsible for any repairs, maintenance, service,

latent or other defects in the Equipment or in the operation thereof, or for compliance of any Equipment with requirements of any laws, ordinances, governmental rules or regulations including, but not limited to, laws with respect to environmental matters, patent, trademark, copyright or trade secret infringement, or for any direct or consequential damages arising out of the use of or inability to use the Equipment.

4.4 Provided no Event of Default, as defined in Section 16 below, has occurred and is continuing, Lessor agrees to cooperate with Lessee, at the sole cost and expense of Lessee, in making any claim against a manufacturer or supplier of the Equipment arising from a defect in such Equipment. At the request of Lessee, Lessor shall assign to Lessee all warranties on the Equipment available from any manufacturer or supplier to the full extent permitted by the terms of such warranties and by applicable law.

5. Ownership; Inspection; Maintenance and Use.

5.1 The Equipment shall at all times be the sole and exclusive property of Lessor. Any Equipment subject to titling and registration laws shall be titled and registered by Lessee on behalf of and in the name of Lessor at the sole cost and expense of Lessee. Lessee shall cooperate with and provide Lessor with any information or documents necessary for titling and registration of the Equipment. Upon the request of Lessor, Lessee shall execute any documents or instruments which may be necessary or appropriate to confirm, to record or to give notice of the ownership of the Equipment by Lessor including, but not limited to, financing statements under the Uniform Commercial Code. Lessee, at the request of Lessor, shall affix to the Equipment, in a conspicuous place, any label, plaque or other insignia supplied by Lessor designating the ownership of the Equipment by Lessor.

5.2 The Equipment shall be located at the address specified in the applicable Equipment Schedule and shall not be removed therefrom without the prior written consent of Lessor. Lessor, its agents or employees shall have the right to enter the premises of Lessee, upon reasonable notice and during normal business hours, for the purpose of inspecting the Equipment.

5.3 Lessee shall pay all costs, expenses, fees and charges whatsoever incurred in connection with the use and operation of the Equipment. Lessee shall, at all times and at its own expense, keep the Equipment in good repair and working order, reasonable wear and tear excepted. Any maintenance contract required by a manufacturer or supplier for the care and upkeep of the Equipment shall be entered into by Lessee at its sole cost and expense. Lessee shall permit the use and operation of the Equipment only by personnel authorized by Lessee and shall comply with all laws, ordinances or governmental rules and regulations relating to the use and operation of the Equipment.

6. *Alterations and Modifications.* Lessee may make, or cause to be made on its behalf, any improvement, modification or addition to the Equipment with the prior written consent of Lessor, provided, however, that such improvement, modification or addition is readily removable without causing damage to or impairment of the functional effectiveness of the Equipment. To the extent that such improvement, modification or addition is not so removable, it shall immediately become the property of Lessor and thereupon shall be considered Equipment for all purposes of this Lease Agreement.

7. Quiet Enjoyment; No Defense, Set-Offs or Counterclaims.

7.1 Provided no Event of Default, as defined in Section 16 below, has occurred and is continuing, Lessee shall have the quiet enjoyment and use of the Equipment in the ordinary course of its business during the Initial Term or any Extended Term without interruption by Lessor or any person or entity claiming through or under Lessor.

7.2 Lessee acknowledges and agrees that ANY DAMAGE TO OR LOSS, DESTRUCTION, OR UNFITNESS OF, OR DEFECT IN THE EQUIPMENT, OR THE INABILITY OF LESSEE TO USE THE EQUIPMENT FOR ANY REASON WHATSOEVER, SHALL NOT (i) GIVE RISE TO ANY DEFENSE, COUNTERCLAIM, OR RIGHT OF SET-OFF AGAINST LESSOR, OR (ii) PERMIT ANY ABATEMENT OR RECOUPMENT OF, OR REDUCTION IN DAILY OR MONTHLY RENT, OR (iii) RELIEVE LESSEE OF THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS LEASE AGREEMENT INCLUDING, BUT NOT LIMITED TO, ITS OBLIGATION TO PAY THE FULL AMOUNT OF DAILY RENT AND MONTHLY RENT, WHICH OBLIGATIONS ARE ABSOLUTE AND UNCONDITIONAL, unless and until this Lease Agreement is terminated with respect to such Equipment in accordance with the provisions of Section 10.2 below. Any claim that Lessee may have which arises from a defect in or deficiency of the Equipment shall be brought solely against the manufacturer or supplier of the Equipment and Lessee shall, notwithstanding any such claim, continue to pay Lessor all amounts due and to become due under this Lease Agreement.

8. Adverse Claims and Interests.

8.1 Except for any liens, claims, mortgages, pledges, encumbrances or security interests created by Lessor, Lessee shall keep the Equipment, at all times, free and clear from all liens, claims, mortgages, pledges, encumbrances and security interests and from all levies, seizures and attachments. Without limitation of the covenants and obligations of Lessee set forth in the preceding sentence, Lessee shall immediately notify Lessor in writing of the imposition of any prohibited lien, claim, levy or attachment on or seizure of the Equipment at which time Lessee shall provide Lessor with all relevant information in connection therewith.

8.2 Lessee agrees that the Equipment shall be and at all times shall remain personal property. Accordingly, Lessee shall take such steps as may be necessary to prevent any person from acquiring, having or retaining any rights in or to the Equipment by reason of its being affixed or attached to real property.

9. Indemnities; Payment of Taxes.

9.1 Lessee hereby agrees to indemnify, defend and hold harmless Lessor, its agents, employees, successors and assigns from and against any and all claims, actions, suits, proceedings, costs, expenses, damages and liabilities whatsoever arising out of or in connection with the manufacture, ordering, selection, specifications, availability, delivery, titling, registration, rejection, installation, possession, maintenance, ownership, use, leasing, operation or return of the Equipment including, but not limited to, any claim or demand based upon any STRICT OR ABSOLUTE LIABILITY IN TORT and upon any infringement or alleged infringement of any patent, trademark, trade secret, license, copyright or otherwise. All costs and expenses incurred by Lessor in connection with any of the foregoing including, but not limited to, reasonable legal fees, shall be paid by Lessee on demand.

9.2 Lessee hereby agrees to indemnify, defend and hold Lessor harmless against all Federal, state and local taxes, assessments, licenses, withholdings, levies, imposts, duties, assessments, excise taxes, registration fees and other governmental fees and charges whatsoever, which are imposed, assessed or levied on or with respect to the Equipment or its use or related in any way to this Lease Agreement ("Tax Assessments"), except for taxes on or measured by the net income of Lessor determined substantially in the same manner as under the Internal Revenue Code of 1986, as amended. Lessee shall file all returns, reports or other such documents required in connection with the Tax Assessments and shall provide

Lessor with copies thereof. If, under local law or custom, Lessee is not authorized to make the filings required by a taxing authority, Lessee shall notify Lessor in writing and Lessor shall thereupon file such returns, reports or documents. Without limiting any of the foregoing, Lessee shall indemnify, defend and hold Lessor harmless from all penalties, fines, interest payments, claims and expenses including, but not limited to, reasonable legal fees, arising from any failure of Lessee to comply with the requirements of this Section 9.2.

9.3 The obligations and indemnities of Lessee under this Section 9 for events occurring or arising during the Initial Term or any Extended Term shall continue in full force and effect, notwithstanding the expiration or other termination of this Lease Agreement.

10. Risk of Loss; Loss of Equipment.

10.1 Lessee hereby assumes and shall bear the entire risk of loss for theft, damage, seizure, condemnation, destruction or other injury whatsoever to the Equipment from any and every cause whatsoever. Such risk of loss shall be deemed to have been assumed by Lessee from and after such risk passes from the manufacturer or supplier by agreement or pursuant to applicable law.

10.2 In the event of any loss, seizure, condemnation or destruction of the Equipment or damage to the Equipment which cannot be repaired by Lessee, Lessee shall immediately notify Lessor in writing. Within thirty (30) days of such notice, during which time Lessee shall continue to pay Monthly Rent, Lessee shall, at the option of Lessor, either (i) replace the Equipment with equipment of the same type and manufacture and in good repair, condition and working order, transfer title to such equipment to Lessor free and clear of all liens, claims and encumbrances, whereupon such equipment shall be deemed Equipment for all purposes of this Lease Agreement, or (ii) pay to Lessor an amount equal to the present value of both the aggregate of the remaining unpaid Monthly Rents and the anticipated residual value of the Equipment plus any other costs actually incurred by Lessor. Lessor and Lessee agree that the residual value of the Equipment at the expiration of the Initial Term is reasonably anticipated to be not less than twenty (20) percent of the Acquisition Cost of the Equipment. The present value shall be determined by discounting the aggregate of the remaining unpaid Monthly Rents and the anticipated residual value of the Equipment to the date of payment by Lessee at the rate of five (5) percent per annum. When and as requested by Lessor, Lessee shall also pay to Lessor amounts due pursuant to Section 18 below, if any, arising as a result of the loss, seizure, replacement, condemnation or destruction of the Equipment. Any insurance or condemnation proceeds received by Lessor shall be credited to the obligation of Lessee under this Section 10.2 and the remainder of such proceeds, if any, shall be paid to Lessee by Lessor in full compensation for the loss of the leasehold interest in the Equipment by Lessee.

10.3 Upon any replacement of or payment for the Equipment as provided in Section 10.2 above, this Lease Agreement shall terminate only with respect to the Equipment so replaced or paid for, and Lessor shall transfer to Lessee title only to such Equipment "AS IS," "WITH ALL FAULTS", and WITH NO WARRANTIES WHATSOEVER, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR USE OR FOR ANY PARTICULAR PURPOSE. Lessee shall pay any sales or use taxes due on such transfer.

11. Insurance.

11.1 Lessee shall keep the Equipment insured against all risks of loss or damage from every cause whatsoever occurring during the Initial Term, or any Extended Term for an amount not less than the higher of the full replacement value of the Equipment or the aggregate of unpaid Daily Rent and Monthly Rent for the balance of the Initial Term, or the Extended Term. Lessee shall also carry public liability insurance, both personal injury and property damage, covering the Equipment, and Lessee shall be liable for any deductible portions of all required insurance.

11.2 All insurance required under this Section 11 shall name Lessor as additional insured and loss payee. Such insurance shall also be with such insurers and shall be in such forms and amounts as are satisfactory to Lessor. All applicable policies shall provide that no act, omission or breach of warranty by Lessee shall give rise to any defense against payment of the insurance proceeds to Lessor. Lessee shall pay the premiums for such insurance and, at the request of Lessor, deliver to Lessor duplicates of such policies or other evidence satisfactory to Lessor of such insurance coverage. In any event, Lessee shall provide Lessor with endorsements upon the policies issued by the insurers which evidence the existence of insurance coverage required by this Section 11 and by which the insurers agree to give Lessor written notice at least twenty (20) days prior to the effective date of any expiration, modification, reduction, termination or cancellation of any such policies.

11.3 The proceeds of insurance required under this Section 11 and payable as a result of loss or damage to the Equipment shall be applied as set forth in Section 10.2 above. Upon the occurrence of an Event of Default as defined in Section 16 below, Lessee hereby irrevocably appoints Lessor as its attorney-in-fact, which power shall be deemed coupled with an interest, to make claim for, receive payment of, execute and endorse all documents, checks or drafts received in payment for loss or damage under any insurance policies required by this Section 11.

11.4 Notwithstanding anything herein, Lessor shall not be under any duty to examine any evidence of insurance furnished hereunder, or to ascertain the existence of any policy or coverage, or to advise Lessee of any failure to comply with the provisions of this Section 11.

12. **Surrender To Lessor.** Immediately upon the expiration of the Initial Term or any Extended Term or at any other termination of this Lease Agreement, Lessee shall surrender the Equipment to Lessor in good repair and working order, reasonable wear and tear excepted, by assembling and delivering the Equipment, ready for shipment, to a place or carrier, as Lessor may designate, within the state in which the Equipment was originally delivered to Lessee or to which the Equipment was thereafter moved with the written consent of Lessor. All costs of removal, assembly, packing and delivery of such Equipment to the place designated by Lessor shall be borne by Lessee.

13. **Fair Market Value Purchase Option.** Lessor hereby grants to Lessee the option to purchase all, but not less than all, Equipment set forth on any Equipment Schedule at the expiration of the applicable Initial Term or Extended Term. Any such purchase shall be for cash in an amount equal to the then fair market value of such Equipment, as determined in good faith by Lessor. This purchase option may be exercised by Lessee, provided that no Event of Default, as defined in Section 16 below, has occurred and is continuing. Lessee shall notify Lessor in writing of its intention to exercise its purchase option at least thirty (30) days prior to the expiration of the Initial Term or any Extended Term. Upon payment of the fair market value by Lessee to Lessor, Lessor shall transfer title to the Equipment to Lessee "AS IS", "WITH ALL FAULTS", and WITH NO WARRANTIES WHATSOEVER, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR USE OR FOR ANY PARTICULAR PURPOSE.

14. **Financial Statements.** Lessee shall annually, within ninety (90) days after the close of the fiscal year for Lessee, furnish to Lessor financial statements of Lessee, including a balance sheet as of the close of such year and statements of income and retained earnings for such year, prepared in accordance with generally accepted accounting principles, consistently applied from year to year, and certified by independent public accountants for Lessee. If requested by Lessor, Lessee shall also provide quarterly financial statements of Lessee, similarly prepared for each of the first three

quarters of each fiscal year, certified (subject to normal year-end audit adjustments) by the chief financial officer of Lessee and furnished to Lessor within sixty (60) days following the end of the quarter, and such other financial information as may be reasonably requested by Lessor.

15. **Delayed Payment Charge.** Lessee shall pay to Lessor interest upon the amount of any Daily Rent, Monthly Rent or other sums not paid by Lessee when due and owing under this Lease Agreement, from the due date thereof until paid, at the rate of one and one half (1-1/2) percent per month, but if such rate violates applicable law, then the maximum rate of interest allowed by such law.

16. **Default.**

16.1 The occurrence of any of the following events shall constitute an event of default ("Event of Default") under this Lease Agreement.

(a) Lessee fails to pay any Daily Rent or any Monthly Rent when due and such failure to pay continues for ten (10) consecutive days; or
(b) Lessee fails to pay any other sum required hereunder, and such failure continues for a period of ten (10) days following written notice from Lessor; or

(c) Lessee fails to maintain the insurance as required by Section 11 above and such failure continues for ten (10) days after written notice from Lessor; or

(d) Lessee violates or fails to perform any other term, covenant or condition of this Lease Agreement or any other document, agreement or instrument executed pursuant hereto or in connection herewith, which failure is not cured within thirty (30) days after written notice from Lessor; or

(e) Lessee ceases to exist or terminates its independent operations by reason of any discontinuance, dissolution, liquidation, merger, sale of substantially all of its assets, or otherwise ceases doing business as a going concern; or

(f) Lessee (i) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator or similar official for itself or for all or a substantial part of its property, (ii) is generally not paying its debts as such debts become due, (iii) makes a general assignment for the benefit of its creditors, (iv) commences a voluntary case under the United States Bankruptcy Code, as now or hereafter in effect, seeking liquidation, reorganization or other relief with respect to itself or its debts, (v) files a petition seeking to take advantage of any other law providing for the relief of debtors, (vi) takes any action under the laws of its jurisdiction of incorporation or organization similar to any of the foregoing, or (vii) takes any corporate action for the purpose of effecting any of the foregoing; or

(g) A proceeding or case is commenced, without the application or consent of Lessee, in any court of competent jurisdiction, seeking (i) the liquidation, reorganization, dissolution, winding up of Lessee or composition or readjustment of the debts of Lessee, (ii) the appointment of a trustee, receiver, custodian, liquidator or similar official for Lessee or for all or any substantial part of its assets, or (iii) similar relief with respect to Lessee under any law providing for the relief of debtors; or an order for relief is entered with respect to Lessee in an involuntary case under the United States Bankruptcy Code, as now or hereafter in effect, or an action under the laws of the jurisdiction of incorporation or organization of Lessee, similar to any of the foregoing, is taken with respect to Lessee without its application or consent; or

(h) Lessee makes any representation or warranty herein or in any statement or certificate at any time given in writing pursuant to or in connection with this Lease Agreement, which is false or misleading in any material respect; or

(i) Lessee defaults under any promissory note, credit agreement, loan agreement, conditional sales contract, guaranty, lease, indenture, bond, debenture or other material obligation whatsoever, and a party thereto or a holder thereof is entitled to accelerate the obligations of Lessee thereunder; or Lessee defaults in meeting any of its trade, tax or other current obligations as they mature, unless such obligations are being contested diligently and in good faith; or

(j) Any party to any guaranty, letter of credit, subordination or credit agreement or other undertaking, given for the benefit of Lessor and obtained in connection with this Lease Agreement, breaches, fails to continue, contests, or purports to terminate or to disclaim such guaranty, letter of credit, subordination or credit agreement or other undertaking; or such guaranty, letter of credit, subordination agreement or other undertaking becomes unenforceable; or a guarantor of this Lease Agreement shall die, cease to exist or terminate its independent operations.

16.2 No waiver by Lessor of any Event of Default shall constitute a waiver of any other Event of Default or of the same Event of Default at any other time.

17. **Remedies.**

17.1 Upon the occurrence of an Event of Default and while such Event of Default is continuing, Lessor, at its sole option, upon its declaration, and to the extent not inconsistent with applicable law, may exercise any one or more of the following remedies:

(a) Lessor may terminate this Lease Agreement whereupon all rights of Lessee to the quiet enjoyment and use of the Equipment shall cease;

(b) Whether or not this Lease Agreement is terminated, Lessor may cause Lessee, at the sole cost and expense of Lessee, to return any or all of the Equipment promptly to the possession of Lessor in good repair and working order, reasonable wear and tear excepted. Lessor, at its sole option and through its employees, agents or contractors, may peaceably enter upon the premises where the Equipment is located and take immediate possession of and remove the Equipment, all without liability to Lessee, its employees, agents or contractors for such entry. LESSEE HEREBY WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHTS TO NOTICE AND/OR HEARING PRIOR TO THE REPOSSESSION OR REPLEVIN OF THE EQUIPMENT BY LESSOR, ITS EMPLOYEES, AGENTS OR CONTRACTORS;

(c) Lessor may proceed by court action to enforce performance by Lessee of this Lease Agreement or pursue any other remedy Lessor may have hereunder, at law, in equity or under any applicable statute, and recover such other actual damages as may be incurred by Lessor;

(d) Lessor may recover from Lessee damages, not as a penalty but as liquidation for all purposes and without limitation of any other amounts due from Lessee under this Lease Agreement, in an amount equal to the sum of (i) any unpaid Daily Rents and/or Monthly Rents due and payable for periods prior to the repossession of the Equipment by Lessor plus any interest due thereon pursuant to Section 15 above, (ii) the present value of all future Monthly Rents required to be paid over the remaining Initial Term or any Extended Term after repossession of the

Equipment by Lessor, determined by discounting such future Monthly Rents to the date of payment by Lessee at a rate of five (5) percent per annum, and (iii) all costs and expenses incurred in searching for, taking, removing, storing, repairing, restoring, refurbishing and leasing or selling such Equipment; or

(e) Lessor may sell, lease or otherwise dispose of any or all of the Equipment, whether or not in the possession of Lessor, at public or private sale and with or without notice to Lessee, which notice is hereby expressly waived by Lessee, to the extent permitted by and not inconsistent with applicable law. Lessor shall then apply against the obligations of Lessee hereunder the net proceeds of such sale, lease or other disposition, after deducting therefrom (i) the present value of the residual value of the Equipment at the expiration of the Initial Term, which is anticipated by Lessor and Lessee to be not less than twenty (20) percent of the Acquisition Cost, such present value to be determined by discounting the residual value to the date of sale, lease or other disposition at a rate of five (5) percent per annum, and (ii) all costs incurred by Lessor in connection with such sale, lease or other disposition including, but not limited to, costs of transportation, repossession, storage, refurbishing, advertising or other fees. Lessee shall remain liable for any deficiency, and any excess of such proceeds over the total obligations owed by Lessee shall be retained by Lessor. If any notice of such sale, lease or other disposition of the Equipment is required by applicable law, ten (10) days written notice to Lessee shall be deemed reasonable.

17.2 No failure on the part of Lessor to exercise, and no delay in exercising, any right or remedy hereunder shall operate as a waiver thereof. No single or partial exercise of any right or remedy hereunder shall preclude any other or further exercise thereof or the exercise of any other right or remedy. Each right and remedy provided hereunder is cumulative and not exclusive of any other right or remedy including, without limitation, any right or remedy available to Lessor at law, by statute or in equity.

17.3 Lessee shall pay all costs and expenses including, but not limited to, reasonable legal fees incurred by Lessor arising out of or in connection with any Event of Default or this Lease Agreement. Lessee shall also be liable for any amounts due and payable to Lessor under any other provision of this Lease Agreement including, but not limited to, amounts due and payable under Section 18 below.

18. Tax Indemnification.

18.1 Lessee represents and warrants that the Equipment is and will remain, during the entire Initial Term and any Extended Term, property used in a trade or business or for the production of income within the meaning of Section 167 of the Internal Revenue Code of 1986, as amended ("Code"). Lessee further acknowledges and agrees that, pursuant to the Code, Lessor or its affiliated group, as defined in Section 1504 of the Code ("Affiliated Group"), shall be entitled to deductions for the recovery of the Acquisition Cost of the Equipment over the recovery period as set forth in the applicable Equipment Schedule, using the Accelerated Cost Recovery System as provided by Section 168 (b) (1) of the Code ("ACRS Deductions").

18.2 If as a result of any reason or circumstance whatsoever, except as specifically set forth in Section 18.3 below, Lessor or its Affiliated Group shall not be entitled to, shall not be allowed, shall suffer recapture of or shall lose any ACRS Deductions, then Lessee shall pay to Lessor, upon demand, a sum to be computed by Lessor in the following manner. Such sum, after deduction of all federal, state and local income taxes payable by Lessor as a result of the receipt of such sum, shall be sufficient to restore Lessor or its Affiliated Group to substantially the same position, on an after-tax basis, as it would have been in but for the loss of such ACRS Deductions. In making its computation, Lessor or its Affiliated Group shall consider, but shall not be limited to, the following factors: (i) the amounts and timing of any net loss of tax benefits resulting from any such lack of entitlement to or loss, recapture, or disallowance of ACRS Deductions but offset by any tax benefits derived from any depreciation or other capital recovery deductions or exclusions from income allowed to Lessor or its Affiliated Group with respect to the same Equipment; (ii) penalties, interest or other charges imposed; (iii) differences in tax years involved; and (iv) the time value of money at a reasonable rate determined, in good faith, by Lessor. For purposes of computation only, the amount of indemnification payments hereunder shall be calculated on the assumption that Lessor and its Affiliated Group have or will have, in all tax years involved, sufficient taxable income and the tax liability to realize all tax benefits and incur all losses of tax benefits at the highest marginal Federal corporate income tax rate in each year. Upon request, Lessor shall provide Lessee with the methods of computation used in determining any sum that may be due and payable by Lessee under this Section 18.

18.3 Lessee shall not be obligated to pay any sums required under this Section 18 in the event that lack of entitlement to, or loss, recapture or disallowance of, any ACRS Deductions results from one or more of the following events: (i) a disqualifying disposition due to the sale of the Equipment by Lessor when no Event of Default, as defined in Section 16 above, has occurred, (ii) a failure of Lessor or its Affiliated Group to timely claim any ACRS Deductions for the Equipment in its tax return, and/or (iii) the fact that Lessor or its Affiliated Group does not have, in any taxable year or years, sufficient taxable income or tax liability to realize the benefit of any ACRS Deductions that are otherwise allowable to Lessor or its Affiliated Group.

18.4 The representations, obligations and indemnities of Lessee under this Section 18 shall continue in full force and effect, notwithstanding the expiration or other termination of this Lease Agreement.

19. Assignment; Sublease.

19.1 Lessor may sell, assign or otherwise transfer all or any part of its right, title and interest in and to the Equipment and/or this Lease Agreement to a third-party assignee, subject to the terms and conditions of this Lease Agreement including, but not limited to, the right to the quiet enjoyment of the Equipment by Lessee as set forth in Section 7.1 above. Such assignee shall assume all of the rights and obligations of Lessor under this Lease Agreement and shall relieve Lessor therefrom. Thereafter, all references to Lessor herein shall mean such assignee. Notwithstanding any such sale, assignment or transfer, the obligations hereunder shall remain absolute and unconditional as set forth in Section 7.2 above.

19.2 Lessor may also pledge, mortgage or grant a security interest in the Equipment and assign this Lease Agreement as collateral. Each such pledgee, mortgagee, lienholder or assignee shall have any and all rights as may be assigned by Lessor but none of the obligations of Lessor hereunder. Any pledge, mortgage or grant of security interest in the Equipment or assignment of this Lease Agreement shall be subject to the terms and conditions hereof including, but not limited to, the right to the quiet enjoyment of the Equipment by Lessee as set forth in Section 7.1 above. Lessor, by reason of such pledge, mortgage, grant of security interest or collateral assignment, shall not be relieved of any of its obligations hereunder which shall remain absolute and unconditional as set forth in Section 7.2 above. Upon the written request of Lessor, Lessee shall acknowledge such obligations to the pledgee, mortgagee, lienholder or assignee.

19.3 LESSEE SHALL NOT SELL, TRANSFER, ASSIGN, SUBLEASE, CONVEY OR PLEDGE ANY OF ITS INTEREST IN THIS LEASE AGREEMENT OR ANY OF THE EQUIPMENT, WITHOUT THE PRIOR WRITTEN CONSENT OF LESSOR. Any such sale, transfer, assignment, sublease,

conveyance or pledge, whether by operation of law or otherwise, without the prior written consent of Lessor, shall be void.

20. *Optional Performance By Lessor.* If an Event of Default, as defined in Section 16 above, occurs and is continuing, Lessor in its sole discretion may pay or perform such obligation in whole or in part, without thereby becoming obligated to pay or to perform the same on any other occasion or to pay any other obligation of Lessee. Any payment or performance by Lessor shall not be deemed to cure any Event of Default hereunder. Upon such payment or performance by Lessor, Lessee shall pay forthwith to Lessor the amount of such payment or an amount equal to all costs and expenses of such performance, as well as any delayed payment charges on such amounts as set forth in Section 15 above.

21. *Compliance and Approvals.* Lessee warrants and agrees that this Lease Agreement and the performance by Lessee of all of its obligations hereunder have been duly authorized, do not and will not conflict with any provision of the charter or bylaws of Lessee or of any agreement, indenture, lease or other instrument to which Lessee is a party or by which Lessee or any of its property is or may be bound. Lessee warrants and agrees that this Lease Agreement does not and will not require any governmental authorization, approval, license or consent except those which have been duly obtained and will remain in effect during the entire Initial Term and any Extended Term.

22. *Miscellaneous.*

22.1 The section headings are inserted herein for convenience of reference and are not part of and shall not affect the meaning or interpretation of this Lease Agreement.

22.2 Any provision of this Lease Agreement which is unenforceable in whole or in part in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such unenforceability without invalidating any remaining part or other provision hereof and shall not be affected in any manner by reason of such enforceability in any other jurisdiction. The validity and interpretation of this Lease Agreement and the rights and obligations of the parties hereto shall be governed in all respects by the laws of The Commonwealth of Massachusetts without giving effect to the conflicts of laws provisions thereof.

22.3 This Lease Agreement, including all Equipment Schedules and Certificates of Acceptance, constitutes the entire agreement between Lessor and Lessee. Lessor and Lessee agree that this Lease Agreement shall not be amended, altered or changed except by a written agreement signed by the parties hereto. LESSEE ACKNOWLEDGES THAT THERE HAVE BEEN NO REPRESENTATIONS, EXPRESS OR IMPLIED, BY LESSOR OTHER THAN AS SET FORTH HEREIN AND LESSEE EXPRESSLY CONFIRMS THAT IT HAS NOT RELIED UPON ANY REPRESENTATIONS BY LESSOR, EXCEPT THOSE SET FORTH HEREIN, AS A BASIS FOR ENTERING INTO THIS LEASE AGREEMENT.

22.4 Any notice required to be given by Lessee or Lessor hereunder shall be deemed adequately given if sent by registered or certified mail, return receipt requested, to the other party at their respective addresses stated herein or at such other place as either party may designate in writing to the other.

22.5 Lessee agrees to execute and deliver such additional documents and to perform such further acts as may be reasonably requested by Lessor in order to carry out and effectuate the purposes of this Lease Agreement. Upon the written request of Lessor, Lessee further agrees to execute any instrument necessary for filing or recording this Lease Agreement or to confirm the ownership of the Equipment by Lessor. Lessor is hereby authorized to insert in any Equipment Schedule the serial numbers of the Equipment and other identifying marks or similar information and to sign, on behalf of Lessee, any Uniform Commercial Code financing statements.

22.6 This Lease Agreement cannot be cancelled or terminated except as expressly provided herein.

22.7 Whenever the context of this Lease Agreement requires, the singular includes the plural and the plural includes the singular. Whenever the word Lessor is used herein, it includes all assignees and successors in interest of Lessor. If more than one Lessee are named in this Lease Agreement, the liability of each shall be joint and several.

22.8 All agreements, indemnities, representations and warranties of Lessee made herein and all rights and remedies of Lessor shall survive the expiration or other termination of this Lease Agreement, whether or not expressly provided herein.

22.9 Any waiver of any power, right, remedy or privilege of Lessor hereunder shall not be effective unless in writing signed by Lessor.

22.10 This Lease Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, Lessor and Lessee, each by its duly authorized officer or agent, have duly executed and delivered this Lease Agreement, which is intended to take effect as a sealed instrument, as of the day and year first written above.

Helm Financial Corporation

By

Title

President

Accepted at Boston, Massachusetts

BANCOSTON LEASING INC.

By

Title

FORM 1 (REV 9-87)

Rider No. 1
to
Master Lease Agreement

18040
RECORDATION NO. _____ FILED 1425

DEC 11 1992-3 20 PM

This Rider No. 1 (the "Rider") is entered into between BancBoston Leasing Inc. ("Lessor") and Helm Financial Corporation ("Lessee"), is contemporaneous with and amends the Master Lease Agreement dated the 17 day of November, 1992 (the "Lease Agreement") between Lessor and Lessee. It is the intention of Lessor and Lessee that, upon execution, this Rider shall constitute a part of the Lease Agreement.

IN CONSIDERATION OF the mutual covenants and promises as hereinafter set forth, Lessor and Lessee hereby agree as follows:

1. All capitalized terms used in this Rider shall, unless otherwise defined, have the meanings set forth in the Lease Agreement.

2. In line 5 of Section 5.1 of the Lease Agreement, after the words "... Uniform Commercial Code," add the following: "... and a Memorandum of this Lease Agreement, and any Riders or Equipment Schedules pursuant thereto, which shall be filed and recorded with the Interstate Commerce Commission in accordance with Section 11303 of Chapter 49 of the United States Code."

3. Delete Section 5.2 and 5.3 of the Lease Agreement and insert the following:

5.2 Identifying Numbers; Legend; Changes. Lessee will cause each item of Equipment to be kept numbered with the applicable identification numbers as shall be set forth on the applicable Equipment Schedule. If required under applicable law or custom to protect the ownership of the Equipment by Lessor, Lessee will mark plainly, distinctly, permanently and conspicuously on each side of each item of Equipment, in letters not less than one inch in height, the words "OWNED BY BANCOSTON LEASING INC. AND LEASED PURSUANT TO A LEASE FILED WITH THE INTERSTATE COMMERCE COMMISSION." Lessee shall not change the identification number of any item of Equipment unless and until a statement of new or substitute number or numbers shall have been filed with Lessor and filed, recorded and deposited by Lessee in all public offices where this Lease Agreement shall have been filed, recorded and deposited.

5.3 Insignia of Lessee. The Equipment may be lettered with the names or initials or other insignia customarily used by Lessee or its permitted sublessee but Lessee will not allow the name of any other person, association or corporation to be placed on any item of Equipment which might be interpreted as a claim of ownership.

5.4 Compliance. Lessee shall comply, or insure compliance, in all material respects, (including, without limitation, with respect to the use, maintenance and operation of each item of Equipment), with (i) all laws of the jurisdiction in which the Equipment is operated, (ii) the interchange rules of the Association of American Railroads, (iii) all lawful rules of the United States Department of Transportation, the Federal Railroad Administration, the Interstate Commerce

Commission and (iv) any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation, maintenance or use of the Equipment.

5.5 Reports by Lessee. Lessee shall prepare and file on behalf of Lessor any and all reports required to be filed with any Federal, state or other regulatory authority in connection with the Equipment or the leasing thereof. In the event any such report must be filed by Lessor, Lessee shall prepare and deliver to Lessor any such report within a reasonable time prior to the required date of filing. Lessor agrees to inform Lessee of any request for such reports received by it.

5.6 Inspection. Lessor, its agents or employees, shall have the right to inspect the Equipment, from time to time, upon reasonable notice, during normal business hours.

5.7 Maintenance. Lessee agrees that, at its own cost and expense, it will maintain and keep each item of Equipment in good operating order, repair and condition as when originally delivered to Lessee, ordinary wear and tear excepted, with due consideration being given to the age of the Equipment on the Commencement Date and the service in which such items are used. All items of Equipment shall be maintained in conformity with the safety and mechanical standards of the Association of American Railroads and the Federal Railroad Administration, or any successor thereof, and eligible for railroad interchange in accordance with the interchange rules of the Association of American Railroads for Class 1 railroads or other applicable regulatory body, and in at least as good condition as prevailing industry standards. Lessee further agrees to make available to Lessor all logs, records and reports related to the maintenance of the Equipment."

4. Insert the following as Section 8.1 of the Lease Agreement and renumber the existing Sections "8.1" and "8.2" as "8.2" and "8.3", respectively:

"8.1 Lessee hereby warrants to Lessor, that prior to the sale of the Equipment to Lessor, Lessee was the lawful owner of the Equipment and had valid and marketable title to the Equipment free and clear of all liens, claims, encumbrances, security interests and rights of third parties other than the lien in favor of The First National Bank of Boston and other lenders under the Credit Agreement dated as of January 15, 1992 by and between Helm Financial Corporation, as Borrower, and The First National Bank of Boston as Agent and a Lender ('Credit Agreement'), among other parties pursuant to the Security Documents as defined in the Credit Agreement, and Lessee will warrant and defend title to the Equipment against all and every person whomsoever. Lessee hereby agrees to indemnify Lessor and hold it harmless from and against any and all loss, cost, damage, or expense (including reasonable attorneys' fees) it may suffer as a result of any claims, demands, suits, actions, causes of action, recoveries or judgments arising out of any claim of title to the Equipment or any lien thereon. Lessee also agrees to obtain a release of the lien and security interest in favor of The First National Bank of Boston for and

on behalf of itself and other lenders under the Credit Agreement and related agreements prior to the sale of the Equipment to Lessor and to forward such release which will be filed by Lessor with the Interstate Commerce Commission.

5. In line 1 of new Section 8.2 of the Lease Agreement, after the words "... created by Lessor ...," insert "... and subject to and without limiting the obligations of Lessee under subsection 8.1 above, ..."

6. In line 2 of new Section 8.2 of the Lease Agreement, after the word "... attachments ..." insert the following: "... other than Permitted Liens as defined in the Credit Agreement except that, for purposes of this section, Permitted Liens shall not include liens created to secure non-recourse indebtedness incurred in connection with discounted lease transactions in connection with any item of Equipment leased pursuant to this Lease Agreement."

7. In Section 10.2 of the Lease Agreement, delete subsection (ii) and the remaining portion of Section 10.2 that appears thereafter, and substitute the following:

"(ii) terminate this Lease Agreement with respect to such Equipment (or item thereof) by paying to Lessor the stipulated Loss value ("Stipulated Loss Value") as defined in Exhibit A, which is attached to each Equipment Schedule, for the date, appearing on such Exhibit, which next follows the date on which the Equipment (or item thereof) is lost, seized, condemned, destroyed or damaged ("Stipulated Loss Payment Date"). Upon payment of the Stipulated Loss Value and any Monthly Rent or other sums due and owing by Lessee to Lessor, the Lease Agreement shall terminate with respect to such Equipment (or item thereof) and all right, title and interest of Lessor in and to the Equipment (or item thereof) shall vest in Lessee. Any insurance proceeds relating to the loss, seizure, condemnation or destruction of or damage to the Equipment (or item thereof), which are paid directly to Lessor, shall either be credited or paid over to Lessee by Lessor up to the amount of any Stipulated Loss Value, either paid or payable by Lessee.

Any amounts paid by Lessee as a Stipulated Loss Value under this Section 10.2 shall not be available to Lessee for the lease of additional Equipment under the Lease Agreement."

8. In line 1 of Section 11.1 of the Lease Agreement, after the words "... shall keep ..." insert the following "... (or cause to be kept) ..." In line 2, delete all words appearing after "... not less than ..." to the end of the sentence in line 3, and insert the following: "... the Stipulated Loss Value for the applicable Equipment Schedule for the Stipulated Loss Payment Date next following the date on which the Equipment listed on such Equipment Schedule was lost, seized, condemned, destroyed or damaged ..."

9. In line 3 of Section 11.2 of the Lease Agreement, after the words "... Lessee shall pay ..." insert the following "... (or cause to be paid) ..."

10. Delete Section 12 of the Lease Agreement and insert the following:

12. Surrender to Lessor. As soon as practicable on

or after the Initial Term or any Extended Term of this Lease Agreement, Lessee will, at the request of Lessor, deliver the Equipment to Lessor upon such storage tracks of Lessee or any affiliate or sublessee of Lessee as Lessor may reasonably designate, or, in the absence of such designation, as Lessee may select, and permit Lessor to store such Equipment on such tracks for a period not exceeding 90 days and transport the same at any time within such 90-day period to any reasonable place on the lines of railroad operated by Lessee or any affiliate or sublessee of Lessee or to any connecting carrier for shipment, all as directed by Lessor upon not less than 30 days' written notice to Lessee. The Equipment shall be returned in the condition in which they are required to be maintained by Lessee under Section 5 and shall be maintained by Lessee, at its own cost and expense, in such condition during the period of storage provided for in this Section 12. Without limiting the obligations of Lessee under Section 5, at the end of the Initial Term the Equipment (i) will have, on average, a remaining Interchange life of ten (10) years without rebuilding, (ii) will conform with the safety and mechanical standards of the Association of American Railroads and the Federal Railroad Administration, or any successor thereof, and (iii) be eligible for railroad interchange in accordance with the interchange rules of the Association of American Railroads for Class I railroads or other applicable body. The assembling, delivery, storage and transporting of the Equipment as in this Section 12 provided shall be at the expense and risk of Lessee. During any storage period, Lessee will permit Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or lessee of the Equipment, to inspect the same; provided, however, that Lessee shall not be liable, except in the case of negligence of Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of Lessor or any prospective purchaser or lessee, the right of inspection granted under this Section.

11. In Section 13 of the Lease Agreement, delete the second sentence and replace it with the following:

"Any such purchase shall be for cash in an amount equal to the lower of (i) the fair market value of the Equipment which is anticipated by Lessor and Lessee to be twenty (20) percent of the Acquisition Cost of the Equipment, or (ii) the fair market value of the Equipment at the end of the Initial Term, as determined in good faith by Lessor."

12. In lines 1, 5 and 6 of Section 14 of the Lease Agreement, replace the word "... Lessor ..." with "... The First National Bank of Boston, as agent for Lessor ..."

13. At the end of Section 14 of the Lease Agreement, add the following:

"14A Representations, Covenants and Agreements.

14A.1 All of the terms, covenants and agreements set forth in Sections 8.2(b), 8.3 and 8.4(b) of the Credit Agreement are hereby incorporated by reference and shall be amended and restated as such sections are amended and restated in the Credit Agreement, from time to time, as if the same had been set forth herein in full. Notwithstanding the foregoing, all

such terms, covenants and agreements shall survive the expiration or other termination of the Credit Agreement and, in the event The First National Bank of Boston exits the Credit Agreement as lender, the terms, covenants and agreements shall be and remain incorporated into this Lease Agreement as of the date The First National Bank of Boston exits the Credit Agreement as lender, notwithstanding amendments and restatements of the Credit Agreement occurring after such date. For purposes of this Section 14A.1, "Borrower" shall mean "Lessee." All other terms incorporated pursuant to this Section 14A.1 and not otherwise defined shall have the meanings set forth in the Credit Agreement.

14A.2 In the event the Credit Agreement has expired or terminated prior to the expiration or other termination of the Lease Agreement or in the event The First National Bank of Boston is no longer a lender under the Credit Agreement, Lessee agrees to provide to Lessor concurrently with the annual financial statements pursuant to Section 14 above, a certificate of compliance as may be reasonably determined by Lessor to monitor on a periodic basis compliance with the provisions of Section 14A.1 above."

14. Replace Section 16.1(l) of the Lease Agreement with the following:

"(a) Lessee defaults under the Credit Agreement and related agreements or, in the event the Credit Agreement has expired or has been terminated prior to the end of the Initial Term or any Extended Term or in the event The First National Bank of Boston is no longer a lender under the Credit Agreement, Lessee defaults under any promissory note, credit agreement, conditional sales contract, guaranty, lease, indenture, bond, debenture or other material obligation whatsoever, and a party thereto or a holder thereof is entitled to accelerate the obligations of Lessee thereunder, provided further that, if accelerated, the amount of any such obligation or the aggregate amount of multiple obligations would exceed \$250,000; or Lessee defaults in meeting any of its trade, tax or other current obligations as they mature, unless such obligations are being contested diligently and in good faith; or"

15. In line 2 of Section 17.1(b) of the Lease Agreement, after the words "... reasonable wear and tear excepted ..." Insert the following "... in accordance with the provisions of Section 12."

16. At the end of Section 17.1(b) of the Lease Agreement, insert the following:

"Upon notice from Lessor, Lessee shall forthwith and in the usual manner, to the extent legally required by applicable law, rules or regulations to protect the Lessor's interest in the Equipment, give prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any item of Equipment has interchanged or which may have possession thereof to return the Equipment. Lessee shall thereupon place such Equipment upon such storage tracks as Lessor may designate, at the risk of Lessee, without charge to Lessor, for insurance, rent or storage until the earlier of (i) the date all such Equipment has been sold, leased or otherwise disposed of by

Lessor or (ii) 120 days from the date all Equipment is stored on tracks as directed by Lessor and available to be sold, leased or otherwise disposed of by Lessor. To the extent there is any inconsistency regarding the storage of the Equipment between this Section and Section 12, the provisions of this Section 17.1(b) shall control upon the occurrence of an Event of Default."

17. At the end of Section 19.3 of the Lease Agreement, add the following:

"19.4 Notwithstanding anything in Section 19.3 to the contrary, Lessee may, without Lessor's consent, sublease (hereinafter, the "Sublease") any item of Equipment to Southern Illinois Railcar Company ("Southern"), an Illinois corporation, provided that (i) no Event of Default has occurred and is continuing hereunder, (ii) the Sublease shall be subject and subordinate in all respects to this Lease Agreement and the rights of Lessor hereunder, (iii) the term of the Sublease shall, in no event, exceed the then remaining Initial Term of such item for Equipment, (iv) Lessee will provide Lessor with an official name and chief business address of Southern, (v) the use of any item of Equipment under the Sublease will in no event be outside of the continental limits of the United States, and (vi) Lessee shall, and shall cause Southern to, execute and deliver such instruments as may be reasonably requested by Lessor to evidence that a valid and legally effective Sublease has been created. No such subleasing by Lessee will reduce any of the obligations of Lessee under this Lease Agreement or the rights of Lessor hereunder, and all of the obligations of Lessee under this Lease Agreement shall be and remain primary and shall continue in full force and effect as the obligations of a principal and not of a guarantor or surety. Southern shall, nevertheless, have the right and responsibility to use and to operate all subleased items of Equipment in accordance with the provisions of Section 5.4 of the Lease Agreement.

19.5 As security for its obligations under this Lease Agreement, Lessee hereby sells, assigns, transfers the Sublease to Lessor and grants a security interest therein in favor of Lessor. In order to perfect the security interest of Lessor in the Sublease, Lessee shall forward, or cause to be forwarded, all originals of the Sublease and shall mark, or cause to be marked, all copies thereof "Assigned for collateral purposes to BancBoston Leasing Inc." Lessee shall also execute and deliver, and cause Southern to execute and deliver, all such additional documents and instruments as may be reasonably requested by Lessor to insure that a valid and legally binding assignment of, and grant of security interest in, the Sublease has been granted by Lessee. "

18. At the end of Section 22 of the Lease Agreement, add the following as Section 23.

"23. United States Bankruptcy Code. To the extent consistent with the provisions of 11 U.S.C. 1168 or any analogous section of the United States Bankruptcy Code (as now or hereafter in effect), it is expressly agreed that the title of Lessor to the Equipment, and any right of Lessor to take possession of the Equipment in compliance with the provisions of

this Lease Agreement, shall not be affected by the provisions of the United States Bankruptcy Code (as now or hereafter in effect)."

The terms and conditions of this Rider shall prevail where there may be conflicts or inconsistencies with the terms and conditions of the Lease Agreement.

IN WITNESS WHEREOF, Lessor and Lessee, by their duly authorized representatives, have executed and delivered this Rider which is intended to take effect as a sealed instrument as of the date of the Lease Agreement.

HELM FINANCIAL CORPORATION

By 

Title President

Accepted at Boston, Massachusetts

BANCOSTON LEASING INC.

By 

Title Vice President

TAM:882